

## NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER <b>2009-1216-10E</b>
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	
AGENCY WITH RULEMAKING AUTHORITY State Allocation Board		AGENCY FILE NUMBER (if any)	

2009 DEC 16 PM 3:57

OFFICE OF  
ADMINISTRATIVE LAW**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Leroy F. Greene School Facilities Act of 1998; Fiscal Crisis SFP Amend		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT	
TITLE(S) 2		AMEND Regulation Sections 1859.96, 1859.148.2 and 1859.166.2	
3. TYPE OF FILING		REPEAL	
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b)) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1) <input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____ <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only			
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100) <input type="checkbox"/> Effective 30th day after filing with Secretary of State <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____			
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY <input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____			
7. CONTACT PERSON Robert Young		TELEPHONE NUMBER (916) 445-0083	FAX NUMBER (Optional) (916) 445-5526
		E-MAIL ADDRESS (Optional) robert.young@dgs.ca.gov	

8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

December 16, 2009

TYPED NAME AND TITLE OF SIGNATORY

Rob Cook, Executive Officer, State Allocation Board

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#### Section 1859.96. Inactive Apportionments Under a State of California Fiscal Crisis.

In the event of a fiscal emergency or crisis on the part of the State of California, the Board can make a finding that a project has an Inactive Apportionment, as defined in Regulation Section 1859.2, that no longer meets the meaning of Apportionment as defined in Education Code Section 17070.15, and that the 18-month requirement set forth in Education Code Section 17076.10(d) is therefore suspended as of December 17, 2008 and until such time as the Board finds that State bond funds are available for the project when the balance of the 18-month time period which existed on December 17, 2008 shall resume. Once the Board finds that State bond funds are available for the project, the 18-month requirement set forth in Education Code Section 17076.10(d) shall resume but in no case shall that period of time exceed a total of 18 months while the subject project has an Apportionment. Each project will resume where its originating period of time was suspended, as of December 17, 2008. An Apportionment for projects impacted by this Section is full and final, pursuant to Education Code Section 17070.63.

This regulation section shall become inoperative January 1, 204011.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.35, 17072.30, 17072.32, 17074.16, and 17076.10, Education Code.

#### Section 1859.148.2. Inactive Preliminary Apportionments Under a State of California Fiscal Crisis.

In the event the Board determines there is a fiscal emergency or crisis on the part of the State of California, the Board can make a finding that a project has an Inactive Preliminary Apportionment, as defined in Regulation Section 1859.2, that no longer meets the meaning of Preliminary Apportionment as defined in Education Code Section 17078.10(c), and that the four-year period with a possible one time one-year extension requirement set forth in Education Code Section 17078.25(a) and (b) is therefore suspended as of December 17, 2008 and until such time as the Board finds that State bond funds are available for the project, the balance of four-year period with a possible one time one-year extension period which existed on December 17, 2008 shall resume. Once the Board finds that State bond funds are available for the project, the four-year period with a possible one time one-year extension requirement set forth in Education Code Section 17078.25(a) and (b) shall resume but in no case shall that period of time exceed a total of four-year period with a possible one time one-year extension while the subject project has a Preliminary Apportionment. Each project will resume where its originating period of time was suspended, as of December 17, 2008.

This regulation section shall become inoperative January 1, 204011.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Section 17078.25, Education Code.

#### Section 1859.166.2. Inactive Preliminary Charter School Apportionments Under a State of California Fiscal Crisis.

In the event the Board determines there is a fiscal emergency or crisis on the part of the State of California, the Board can make a finding that a project has an Inactive Preliminary Charter School Apportionment, as defined in Regulation Section 1859.2, that no longer meets the meaning of Preliminary Charter School Apportionment as defined in Education Code Section 17078.52(c)(3), and that the four-year period with a possible one time one-year extension requirement set forth in Education Code Section 17078.25(a) and (b) is therefore suspended as of December 17, 2008 and until such time as the Board finds that State bond funds are available for the project, the balance of four-year period with a possible one time one-year extension period which existed on December 17, 2008 shall resume. Once the Board finds that State bond funds are available for the project, the four-year period with a possible one time one-year extension requirement set forth in Education Code Section 17078.25(a) and (b) shall

resume but in no case shall that period of time exceed a total of four-year period with a possible one time one-year extension while the subject project has a Preliminary Charter School Apportionment. Each project will resume where its originating period of time was suspended, as of December 17, 2008.

This regulation section shall become inoperative January 1, 2010~~11~~.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.52 and 17078.53, Education Code.

## **FINDING OF EMERGENCY**

The State Allocation Board (SAB) finds that an emergency exists, and that the proposed regulations are necessary for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.

### **Specific Facts Showing the Need for Immediate Action**

Immediate action is needed to extend until January 1, 2011 the SAB's authority to help prevent school bond apportionments and preliminary apportionments from expiring during the State's current fiscal crisis. As enumerated below, over \$1.87 billion of approved school bond funding for school facility projects has not been disbursed to school districts due to the State's fiscal emergency. This approved funding has been protected from expiring under the authority of three School Facility Program (SFP) regulation sections, but the authority in the three regulation sections will sunset on January 1, 2010.

Expiration of the apportionments and preliminary apportionments would result in approved school construction projects being rescinded. Without the proposed one year extension of the SAB's authority, there would be no school facility project apportionments and preliminary apportionments that could be protected from expiring. In addition, after January 1, 2010, the SAB would not have the authority to reinstate inactive apportionments and preliminary apportionments when State financing again becomes available for bond-funded projects.

On December 17, 2008, the State's Pooled Money Investment Board (PMIB) took action to temporarily halt disbursing cash from the State's Pooled Money Investment Account (PMIA) for capital projects, including school construction projects, because of the State's critical financial situation. The Office of Public School Construction (OPSC) utilizes cash from the PMIA to release State funds for school construction projects that have been approved by the SAB. Because of the PMIB action, the SAB: 1) cannot make apportionments for school facility projects; 2) has been unable to release State funds for school construction projects approved after December 17, 2008; and 3) continues to make unfunded project approvals.

The SAB, at its September 23, 2009 meeting, adopted emergency regulatory amendments to extend until January 1, 2011 its authority to find school bond apportionments and preliminary apportionments "inactive" to help prevent them from expiring during the State's current fiscal crisis. This is in continued response to the PMIB's temporary halt of disbursements for capital projects, including the construction of public schools, on December 17, 2008. The amendments continue the SAB's authority for an additional year to help protect school facility project funding from expiring under three programs:

- New Construction/Modernization Program,
- Critically Overcrowded School Facilities Program (COS Program), and
- Charter School Facilities Program (CSFP).

**New Construction and Modernization Projects.** Initially, the SAB's authority to designate apportionments as "inactive" was approved by the OAL in emergency regulations approved by the OAL (OAL Emergency File Number 2009-0330-02E) and filed with the Secretary of State on April 9, 2009. This authority helped prevent 849 SFP school construction project apportionments from expiring in 250 school districts across the State of California.

The proposed emergency regulations extend for an additional year the SAB's authority to make findings that certain apportionments are "inactive" to relieve school districts from meeting the 18-month time limit for the release of SAB-approved apportionments as stipulated in Education Code Section 17076.10(d). When State financing again becomes available for bond-funded projects, the SAB will have the authority to allow the 18-month time limit to resume, and school districts will be able to move forward with their projects.

COS Program and Charter School Facilities Program. Initially, the SAB's authority to designate preliminary apportionments as "inactive" under the COS Program and the CSFP was approved by the OAL in emergency regulations approved by the OAL (OAL Emergency File Number 2009-0414-03E) and filed with the Secretary of State on April 22, 2009. This authority helped prevent \$1.263 billion in preliminary apportionments, representing 344 projects, from expiring under the COS Program; and \$609.1 million in preliminary apportionments, representing 43 projects, from expiring under the CSFP. Due to the PMIB cessation of school bond funding, these projects would not have been able to convert to final apportionments until State bond funds are again available.

The "inactive" finding temporarily suspends the time period for conversion to final apportionments. This period is four years from the date of the preliminary apportionment plus an allowable one-year extension upon SAB approval. When State financing again becomes available for bond-funded projects, the SAB will have the authority to reinstate the time period to convert to final apportionments as it existed on December 17, 2008.

The proposed amendments continue until January 1, 2011 the SAB's authority to help prevent preliminary apportionments from expiring, thereby preserving the ability for school districts and charter schools to convert to final apportionments in the future.

The PMIB action to halt disbursements for bond-funded school construction projects may cause construction delays or stoppages, workers being idled, cancellation of contracts, risk of penalties and civil damages, or even insolvency. The proposed amendments could help some school districts or charter schools to avoid some of these negative impacts because the preliminary apportionments would be protected from expiring.

### **Authority and Reference Citations**

Authority: Sections 17070.35, 17075.15 and 17078.64 of the Education Code.

Reference: Sections 17070.35, 17072.30, 17072.32, 17074.16, 17076.10, 17078.25, 17078.52 and 17078.53 of the Education Code.

### **Informative Digest/Policy Overview Statement**

Senate Bill 50, Chapter 407, Statutes of 1998, established the School Facility Program which streamlined funding processes, eliminated State oversight, and made school districts more accountable for their projects. The SAB adopted regulations to implement the Leroy F. Greene School Facilities Act of 1998, which were adopted by the Office of Administrative Law and filed with the Secretary of State on October 8, 1999.

The proposed amendments to SFP regulation sections are summarized as follows:

Existing Regulation Section 1859.96 sets forth criteria for the suspension of the 18-month time limit for school districts to request the release of funds for SAB-approved apportionments, and

states that it will become inoperative on January 1, 2010. The proposed amendment extends the sunset date to January 1, 2011.

Existing Regulation Section 1859.148.2 authorizes the SAB to determine a State fiscal emergency or crisis exists for the purpose of finding Preliminary Apportionments under the COS Program to be "Inactive," which suspends, as of December 17, 2008, the time period for an applicant to convert to a Final Apportionment. This period is four years from the date of the Preliminary Apportionment, plus a possible one-year extension as set forth in Education Code Section 17078.25(a) and (b). Once the SAB finds that State bond funds are available for the project, the balance of this time period to convert to a Final Apportionment resumes as it existed on December 17, 2008. This Section will become inoperative on January 1, 2010. The proposed amendment extends the sunset date to January 1, 2011.

Existing Regulation Section 1859.166.2 authorizes the SAB to determine a State fiscal emergency or crisis exists for the purpose of finding Preliminary Charter School Apportionments under the CSFP to be "Inactive," which suspends, as of December 17, 2008, the time period for an applicant to convert to a Final Charter School Apportionment. This period is four years from the date of the Preliminary Apportionment, plus a possible one-year extension as set forth in Education Code Section 17078.25 (a) and (b). Once the SAB finds that State bond funds are available for the project, the balance of this time period to convert to a Final Apportionment resumes as it existed on December 17, 2008. This Section will become inoperative on January 1, 2010. The proposed amendment extends the sunset date to January 1, 2011.

#### **Mandate on Local Agencies or School Districts**

The Executive Officer of the SAB has determined that the proposed emergency regulations do not impose a mandate or a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require local agencies or school districts to incur additional costs in order to comply with the proposed emergency regulations.

#### **Cost Estimate**

The Executive Officer of the SAB has assessed the potential for significant adverse economic impact that might result from the proposed emergency regulatory action and it has been determined that:

- There will be no costs or savings to the State.
- There will be no non-discretionary costs or savings to local agencies.
- There will be no costs to school districts except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.